

Wisconsin Internet Tax Freedom Act

**Assembly Bill 223
Rep. Rich Zipperer**

**December 18, 2007 Public Hearing
Assembly Committee on Energy and Utilities**

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STATE REPRESENTATIVE

RICH ZIPPERER

Written Testimony of Rep. Rich Zipperer Assembly Committee on Energy & Utilities December 18, 2007

Mr. Chairman and committee members, thank you for holding this hearing today on Assembly Bill 223, a bill that will bring Wisconsin into compliance with a national bipartisan effort to keep internet access tax-free.

In November of this year, the US Congress showed that bipartisanship isn't dead just yet, when Democrats and Republicans, conservatives and liberals, came together to pass a 7 year extension on the federal internet access tax moratorium. And, like his Democratic predecessor, President Clinton, Republican President George W. Bush signed the moratorium extension into law. Not a single Member of Congress voted against the extension on its way to the Oval Office.

This success at the federal level is evidence of the need to encourage our families and businesses to become tech savvy in the burgeoning information age. By extending the internet access tax moratorium, Congress has demonstrated the understanding that our nation cannot afford to put a growing sector of the economy at a disadvantage with our global competition.

This bipartisan success story, however, has been stopped in its tracks at the Illinois border. Here in Wisconsin, the federal ban will do nothing for taxpayers because here the bipartisan efforts have been in the exact opposite direction. Since the early 1990s, the Department of Revenue, under both Republican and Democratic governors has insisted upon collecting an internet access tax. As a result, Wisconsin families and businesses will have to pay over \$70 million in the next two years for a tax that is banned in almost every other corner of the country. This creates a significant competitive disadvantage for our state.

The Internet Access Tax is the sales tax you pay on the internet service to your home or business. Every time you pay your monthly internet bill, 5% goes to the state. When you consider how many families and small businesses in Wisconsin have internet service, the price tag skyrockets. According to the Department of Revenue, the cost to consumers in 2008 will be \$35.6 million and \$38.3 million in 2009. And, it will only go up from there as more and more households and companies rely on internet access for their daily business.

While the tax has been banned at the federal level since 1998, because of a grandfather clause in the initial federal ban and the Department of Revenue's unwillingness to give up this source of revenue, Wisconsin continues to collect the tax, as it has since 1991.

To finally end this tax in Wisconsin and help our state compete in the Information Age, I have authored Assembly Bill 223 to prohibit the Department of Revenue from collecting the tax.

(continued...)

Ending this regressive tax will make a real difference for household budgets throughout Wisconsin. The beneficiaries will be the small businesses in Wisconsin who decide to use the internet to help their businesses run more efficiently and reach more customers, and the families struggling to make ends meet who, if the tax were ended, could afford the internet to help their kids with homework and become better prepared for college and the computer-driven world ahead. Just as importantly, once this tax is ended Wisconsin technology companies will finally be on even footing with their competitors around the country.

As the information sector becomes an ever more important part of the worldwide economy, we must show that Wisconsin is ready and able to compete for jobs and investment. Catching up with the rest of the country by ending the internet access tax is a great place to start.

To conclude, I'd like to read from the official October 8, 1998 press statement from President Bill Clinton regarding this issue:

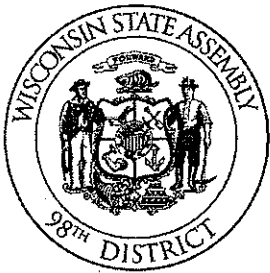
"I am pleased that the Senate has joined the House in passing the Internet Tax Freedom Act. This bill will create a short-term moratorium on new and discriminatory taxes that would slow down the growth of the Internet, and launch a search for long-term solutions to the tax issues raised by electronic commerce. As I said earlier this year in my speech on Internet policy, we cannot allow 30,000 state and local tax jurisdictions to stifle the Internet."

President Clinton was right, taxes like this stifle the Internet, and that is why we must end this tax.

Thank you again for holding this hearing today. I'll be happy to take any questions.

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NOTE: The original fiscal estimate by the Department of Revenue indicated a savings for taxpayers of \$103 million for 2008-09. A revised estimate has since been submitted showing reduced savings to taxpayers if AB223 is enacted of \$36.1 million in 2008 and \$38.3 million in 2009.



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Wisconsin Internet Tax Freedom Act

NEED FOR LEGISLATION: Wisconsin is currently one of only a handful of states that impose a sales tax on internet access, putting Wisconsin consumers and businesses at a competitive disadvantage. AB223 will bring Wisconsin into compliance with the federal moratorium.

ISSUE HISTORY:

- In 1998 Congress passed the Internet Tax Freedom Act to place a moratorium on internet access taxes. The ITFA included a grandfather clause for states that already collected a tax on 'telecommunications services.' While not specifically allowed in statutes, Wisconsin had already been collecting the tax and was included in the grandfather clause.
 - Signed into law by President Clinton on October 21, 1998
- In 2002 the state Department of Revenue used administrative code to redefine 'telecommunications services' in Wisconsin to include 'internet access services.' The administrative code change became effective December 1, 2002. This redefinition codified Wisconsin's collection of the tax and allowed Wisconsin to continue to circumvent the federal moratorium.
- In 2004 Congress passed the Internet Tax Nondiscrimination Act, which extended the internet access tax moratorium.
 - Approved by Senate, 93-3
 - Approved by House of Representatives on voice vote
 - Signed by President Bush on December 3rd, 2004
 - Specific language included by Wisconsin's congressional delegation intended to end the tax in Wisconsin.
- Congress extended the moratorium again in October, 2007.
 - Senate approved on a voice vote
 - House approved 402-0.
 - Signed by President Bush.

HOW MUCH DOES THIS COST TAXPAYERS? According to the Department of Revenue, if enacted this year, AB 223 will provide \$47 million of tax relief in 2008 and \$56 million in 2009 for Wisconsin's internet consumers.

NOTE: Since writing this memo, the Department of Revenue has submitted a revised fiscal estimate indicating that the 'lost revenue' (in other words, savings to the taxpayers) if AB223 is enacted will be \$36.1 million in 2008 and \$38.3 million in 2009, compared to their original estimate of \$103 million for 2008-09.



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What the Department of Revenue Says:

- The Department argues that the state tax was approved in the 1991-93 budget; therefore the federal moratorium doesn't apply.

Facts:

- While the 1991-93 state budget redefined 'telecommunications services,' it did not talk specifically to the internet access tax.
- The Department of Revenue specifically authorized itself to collect the sales tax on internet access services through a 2002 administrative code change, which went into effect on December 1, 2002. The federal moratorium was already in effect at this time.
- In 2004, the Wisconsin congressional delegation included language in the Internet Tax Nondiscrimination Act (s.150) to specifically eliminate Wisconsin's claim to be grandfathered. Here's the language:

Sec.1104 (B)(i) this subsection shall not apply after November 1, 2006 with respect to a State telecommunications service tax described in clause (ii).

Clause (ii)

(I) enacted by state law on or after October 1, 1991, and imposing a tax on telecommunications service and (II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.

- The intent of this language was to include Wisconsin in the national moratorium, however the Department ignores that intent by stating that the 1991 state budget provision relating to the 'telecommunications services' section of Wisconsin statutes was enacted before the October 1, 1991 date specified in the federal language.
- While the 1991-93 budget was published on August 14, 1991, the section dealing with 'telecommunications services' went into effect on October 1, 1991.
- **Taxing internet access has been recognized nationally by Republicans and Democrats for almost a decade as bad public policy. Wisconsin should join the rest of the nation and end this taxation whether a technicality in the federal language allows Wisconsin the ability to collect the tax or not.**



STATE REPRESENTATIVE

RICH ZIPPERER

NEWS RELEASE

FOR IMMEDIATE RELEASE
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Public Hearing Held on Wisconsin Internet Tax Freedom Act

Zipperer-authored legislation would bring Wisconsin into compliance with bipartisan federal moratorium and save taxpayers tens of millions every year

Madison—On Tuesday, the Assembly committee on Energy and Utilities held a public hearing on Assembly Bill 223, the Wisconsin Internet Tax Freedom Act authored by Representative Rich Zipperer (R-Pewaukee). Earlier this fall, the U.S. Congress acted to continue a federal ban on internet access taxation, a ban the Wisconsin Department of Revenue currently ignores. The federal ban was originally signed by President Clinton in 1998, and has since been extended by both Republican and Democrat-controlled congresses.

"It's rare to have a tax relief measure in Washington that enjoys such broad bipartisan support," said Zipperer. **"Presidents Clinton and Bush, Nancy Pelosi, Dave Obey, Jim Sensenbrenner and Russ Feingold all agree- taxing internet access right now is bad public policy. In fact, not a single member of Congress voted against the recent extension of the tax moratorium. Yet, Wisconsin is one of only a handful of states that continue collecting the tax, costing Wisconsin families and businesses millions every year."**

Federally, internet access taxes were originally banned in 1998, but a grandfather clause excluded states like Wisconsin that had already been collecting the tax. Since the original moratorium, Congress has repeatedly extended the tax ban and has worked to end the grandfather clause that allowed Wisconsin to continue collecting the tax in 1998, including a 2005 clause that specifically addressed Wisconsin's situation.

"The Internet continues to be a rapidly growing sector of our economy," said Zipperer. **"Our state simply cannot afford to be left behind as the rest of the country embraces the opportunities offered by broad, affordable access to the Internet."**

According to the original fiscal estimate prepared by the Department of Revenue on April 17, 2007, the savings to taxpayers if the Wisconsin Internet Tax Freedom Act is enacted would be \$103 million over two years. The Department recently updated their estimate in November, reducing the stated savings to \$74 million over two years.

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Governor

Roger M. Ervin
Secretary of Revenue

Assembly Energy and Utilities Committee Hearing, December 18, 2007

AB 223- Exempting Internet Access Services from Sales and Use Tax (Rep. Zipperer)

Description of Current Law and Proposed Change

Federal legislation (HB 3678) was recently enacted to extend to 2014 the general moratorium on the imposition of sales taxes on Internet access. The legislation, however, included a grandfather clause allowing the continuation of certain existing taxes on Internet access, including the tax imposed by the State of Wisconsin.

Under Wisconsin law, Internet access is a telecommunications service and, therefore, subject to sales and use tax.

The bill defines the terms "Internet" and "Internet access service" and exempts Internet access service from sales and use tax. The bill is effective the first day of the second month beginning after publication.

Fairness/Tax Equity

- AB 223 singles out Internet access from other telecommunications services for preferential tax treatment. While the protection of Internet access from taxation may be viewed as important to avoid inhibiting the growth of new sectors of the economy, the Internet has become a well established means of conducting commerce for both businesses and individuals.
- The exemption under the bill narrows the tax base and, thereby, shifts more of the costs of government to other taxpayers. Exempting new sectors of the economy places more of the tax burden on older and slower growing industries and may produce tax revenues inadequate to fund public services.

Impact on Economic Development

- To the extent the cost of Internet access decreases under the bill, sales of Internet access service may increase. In response, Internet access providers may invest additional capital to meet the increased demand. However, it is not clear whether the tax reduction under the bill is necessary to increase demand and stimulate investment.
- The exemption under the bill may reduce the cost of Internet access for low-income households.

Administrative Impact/Fiscal Effect

- Telecommunications services are often bundled (for example, local and long distance calling, and Internet access for a single price). These bundled services often are provided over the same wires and use much of the same equipment. Exempting Internet access, while continuing to tax other telecommunications services, may, increase compliance costs for taxpayers, add legal costs for all parties to settle disputes regarding what is taxable, and increase administrative costs of the Department of Revenue.
- Assuming the bill is effective March 1, 2008, the bill is estimated to decrease state sales taxes by \$11.2 million in FY08 and \$35.6 million in FY09. In addition, county, baseball park, and football stadium district sales and use taxes would decrease by \$0.9 million in FY08 and \$2.7 million in FY09.
- To the extent telecommunications companies allocate more of the cost of a package of services to Internet access and less to taxable telecommunications, these revenue decreases may be larger.
- **Technical Concern:** The federal Internet Tax Freedom Act provides that the term Internet access does not include voice, audio or video programming, or other products and services (not elsewhere included in Internet access) that utilize Internet protocol and for which there is a charge. Voice transmissions, at least, seem to be clearly excluded from the definition of Internet access. However, the definition of Internet access service in this bill is broad enough to include VOIP and other telecommunications (e.g., ordinary telephone calls and data transmissions) provided using the Internet. Total Wisconsin sales taxes on telecommunications are estimated to be \$215 million in 2007. These include state taxes of \$200 million and local taxes of \$15 million. The bill puts these revenues at risk. The bill could be amended to use the ITFA definition of Internet access if there is to be an exemption. Otherwise, it appears that the exemption would include any telecommunications services provided via the Internet.

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